

**MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
TUESDAY, JANUARY 16, 2007**

**DEPARTMENT OF GAME AND INLAND FISHERIES
BOARD ROOM
4010 WEST BROAD STREET
RICHMOND, VIRGINIA**

Board Members Present:

Richard D. Langford, Chair
Hullihen W. Moore
Bruce C. Buckheit

Vivian E. Thomson, Vice-Chair
John D. Hanson

Department of Environmental Quality:

David K. Paylor, Director
Cindy M. Berndt

Richard F. Weeks, Chief Deputy

Attorney General's Office:

Carl Josephson
Senior Assistant Attorney General

The meeting was convened at 9:37 a.m., recessed at 9:39, convened in closed session at 9:39, ended the closed session and reconvened at 10:11 a.m., recessed at 11:52 a.m., reconvened at 12:47 p.m. recessed at 2:50 p.m., reconvened at 3:00 p.m. and adjourned at 4:55. p.m.

Minute No. 1 – Closed Session: The Board on a motion by Richard Langford, unanimously approved a motion to recess the meeting and convene a closed session pursuant to Section 2.2-3711 A 7 of the Code of Virginia for the purpose of consultation with legal counsel and briefings by staff members (including David K. Paylor, James E. Sydnor, James J. Golden and Cindy M. Berndt) concerning legal issues concerning the Clean Air Mercury Rule, Virginia Mercury Control Program and Mercury Compliance Obligations in Nonattainment Areas regulations. Upon completion of the closed session, the Board, on a motion by Mr. Langford unanimously (recorded by roll call) certified that to the best of each member's knowledge that only public business matters lawfully exempted from open meeting requirements under Virginia law and only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Board.

Minute No. 2 – Clean Air Mercury Rule (C06), Virginia Mercury Control Program (F05) and Mercury Compliance Obligations in Nonattainment Areas (G06): Mr. James E. Sydnor, Ms. Doris McLeod and Ms. Beth Major presented the Clean Air Mercury Rule (C06) regulation. The presentation included a discussion of the legislation enacted by the General Assembly in 2006 and federal requirements of the Clean Air Mercury Rule. The Board was briefed on the regulations which establish the Hg budget trading program for coal fired electric steam generating units and on the provisions regarding applicability, permitting, allowance methodology, monitoring, banking, and compliance determination. Staff informed the Board that Virginia's Hg annual trading budgets are 1,184 pounds in 2010 through 2017 and 468 pounds in 2018 and thereafter. In addition, staff advised that beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater

than 25 MWe will be subject to the provisions of this part. To accommodate the Hg emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The Hg allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2001 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of Hg generated above the allocated allowances. Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1; i.e., for every ounce over its allocations, three ounces will be forfeited from the next year's allocation. Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt into the program.

Staff then advised the Board that the Clean Air Mercury Rule differed from the Federal Model Rule with regard to the allocation methodology, the new unit set-aside, and the new energy efficiency/renewable energy unit set-aside.

Mr. James Sydnor and Mr. Robert Mann presented the Virginia Mercury (Hg) Control Program (Part V of 9 VAC 5 Chapter 140, Rev. F05). The presentation included a discussion of the legislation enacted by the General Assembly in 2006 and a summary of the substantive requirements of the regulation including:

- Requirements that beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the state-specific rule except that the state-specific rule applies only to the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of Hg from such units exceeded 200 pounds in 1999.
- Virginia's Hg annual control budgets under the state-specific rule are the same as the Hg trading budgets under the state model rule.
- Any allowances that would be allocated under the state model rule to a unit not subject to the state-specific rule will not be allocated, but will be retired permanently and are not to be submitted to EPA.
- Nothing in the state-specific rule shall be construed to prohibit the banking, use, or selling of allowances under the state model rule.
- If the provisions of the state model rule and the state-specific rule conflict, the provisions of the state-specific rule prevail.
- Compliance with the state model rule and the state-specific rule is determined separately and in accordance with the terms of each rule.
- The state-specific rule uses annual emissions caps (see below) to limit emissions of mercury; violation of the annual emissions cap is a violation of the Code of Virginia;
- The allowances under the state-specific rule have no market value under any trading program, including the EPA Hg trading program.
- The state-specific rule provides that each covered unit be allocated a separate set of allowances (called Virginia state-only Hg allowances) equal to the amount of allowances allocated under the state model rule.
- The allowances (measured in ounces per year) are allocated for the months of January 1 through December 31, otherwise known as the control period.
- Under the state-specific rule, the allowances will be the basis for the establishment of an independent annual emissions cap equivalent to the number of allowances issued to the unit.
- With some exceptions, compliance with the emissions cap would not rely on the use of

allowances under the state model rule but would be accomplished by comparing the actual emissions with the emissions cap (based on the Virginia state-only Hg allowances).

- Compliance must be demonstrated annually, for the preceding control period.
- Provisions are included to allow compliance to be demonstrated in the aggregate (a comparison of (i) the sum of the Hg emissions from the units and (ii) the sum of the Virginia state-only Hg allowances allocated to the units) for all units under common ownership.
- The state-specific rule has different compliance requirements depending on the size of the power generation system to which the unit belongs. There are three sizes: large, medium and small.

Mr. James Sydnor and Mr. Robert A. Mann presented the Mercury Compliance Obligations in Nonattainment Areas (Part VII of 9 VAC 5 Chapter 140, Rev. G06). The presentation included a discussion of the legislation enacted by the General Assembly in 2006 and a summary of the substantive requirements of the regulation including, but not limited to:

- That beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the nonattainment area rule. However, the nonattainment area rule applies only to electric generating facilities that are under common ownership and located within a nonattainment area.
- The nonattainment area rule uses annual emissions caps (see below) to limit emissions of mercury. Violation of the annual emissions cap is a violation of the Code of Virginia. The allowances under the nonattainment area rule have no market value under any trading program, including the EPA Hg trading program, and are not to be submitted to EPA.
- The nonattainment area rule has two sets of compliance requirements, each of which is substantively the same in procedure. This is necessary because the units subject to and the allocations under the state model rule and the state-specific rule are not the same.
- The nonattainment area rule provides that each covered unit will be allocated a separate set of allowances (called Virginia Hg nonattainment area allowances) equal to the amount of allowances allocated under the state model rule or state-specific rule, as the case may be. The allowances (measured in ounces per year) are allocated for the months of January 1 through December 31, otherwise known as the control period. Under the nonattainment area rule, the allowances will be the basis for the establishment of an independent annual emissions cap equivalent to the number of allowances issued to the unit. With some exceptions, compliance with the emissions cap would not rely on the use of allowances under the state model rule or state-specific rule but would be accomplished by comparing the actual emissions with the emissions cap (based on the Virginia Hg nonattainment area allowances). Compliance must be demonstrated annually, for the preceding control period. Provisions are included to allow compliance to be demonstrated in the aggregate (a comparison of (i) the sum of the Hg emissions from the units and (ii) the sum of the Virginia Hg nonattainment area allowances allocated to the units) for all units under common ownership.
- The owner of the covered units will also be allowed to satisfy its compliance obligations under the nonattainment area rule through the conversion of CAMR allowances to Virginia Hg nonattainment area allowances. The CAMR allowances must be allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of Virginia's border. However, should the units be located in a state that is not participating in the EPA administered Hg Budget trading program, the owner of the covered units will also be allowed to satisfy its compliance obligations under the nonattainment area rule through the conversion of state-only allowances to Virginia Hg nonattainment area allowances. The state-only allowances must be allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of

Virginia's border.

Staff then presented the following recommendations:

- That the Board (i) adopt the Hg Budget Trading Program (C06) as a final regulation under the exempted procedure with an effective date as provided in the Administrative Process Act; (ii) affirm that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act; and (iii) direct that the Hg Budget Trading Program (C06) be submitted to EPA as a designated pollutant plan (after 30 day comment period and hearing).
- That the Board authorize (i) promulgation of the proposed Virginia Hg Control Program (F05) for an informal comment period and (ii) if the Office of the Attorney General does not make a determination that this regulation action qualifies for an exemption under § 2.2-4006 A 4 a of the Administrative Process Act, the Department to proceed to process this regulatory action under the standard rulemaking procedure.
- That the Board authorize (i) promulgation of the proposed Hg Compliance in Nonattainment Areas (G06) regulation for an information public comment period and (ii) if the Office of the Attorney General does not make a determination that this regulation action qualifies for an exemption under § 2.2-4006 A 4 a of the Administrative Process Act, the Department to proceed to process this regulatory action under the standard rulemaking procedure.

The Board then received comment from the public. Speakers were Julie Crenshaw Van Fleet, Catharine Gilliam, Caleb Jaffe, Lenny Dupuis, Sallie Sebrell, and Joshua Low.

Based on the Board book material, staff presentation, and Board discussion, a motion was made by Ms. Thomson, and seconded, to adopt staff recommendations. The Board, on a motion by Mr. Moore, unanimously approved an amendment to the Hg Budget Trading Program (C06) to insert the correct NSPS number. The Board, on a motion by Mr. Moore, unanimously approved an amendment to the Hg Compliance in Nonattainment Areas (G06) rule to bar the wheeling of credits from out of state. The Board, on a motion by Mr. Hanson, unanimously approved staff recommended amendments to the Virginia Hg Control Program (F05) to add definitions for "interstate power generation system", "surrender", and "surplus" and amendments to the Virginia Hg Compliance Program for Nonattainment Areas (G06) to add definitions for "interstate power generation system" and "surrender". The Board then unanimously adopted the staff recommendations.

The Board asked to report on what is going on with reactive mercury emissions versus actual mercury emissions. In addition, the Board suggested that the mercury study required by the 2006 legislation be completed as quickly as possible. Further, it was suggested that peer review be included in the contract and suggested that the authors of the Biological Mercury Hotspots in the Northeastern United States and Southeastern Canada article in the January, 2007 issue of BioScience be considered to peer review the study.

Minute No. 3 – Mercury Switch Regulations: The Board received a report from Steven A. Frazier, Office of Solid Waste, on regulations adopted by the Virginia Waste Management Board to recover and dispose of mercury switches in automobiles.

Minute No. 4 – State Advisory Board on Air Pollution Reports: The Board received the last report from the State Advisory Board on Air Pollution dealing with Greenhouse Gases.

Minute No. 5 – State Advisory Board on Air Pollution Membership and Projects: The Board, on a motion by Ms. Thomson, (1) appointed Charles Forbes, Assistant Director of Solid Waste Disposal & Resource Recovery, Fairfax County Department of Public Works; Steve Pierett, Environmental Manager, Volvo Trucks North America – New River Valley Plant; and Stephanie Woolf, Director of

Environmental Health and Safety Office, Old Dominion University to the Advisory Board with terms expiring December 31, 2008 and (2) reappointed Douglas J. Feuerbach, Dynax America Corporation, Ted Handel, Handel & Associates; Brock Herzberg, Virginia Farm Bureau and Affiliated Companies; Daniel R. Holmes, Piedmont Environmental Council; Angela L. Jenkins, Hunton & Williams LLP; Joseph G. Loschiavo, DuPont Company - Spruance Plant; John V. Roland, Virginia Asphalt Association; Lowell Smith; and Cathy Taylor, Dominion Generation, to terms expiring December 31, 2008.

The Board also discussed with the Advisory Board several possible projects for 2007, including continuing the Greenhouse gas project and researching PM2.5 air quality issues.

Minute No. 6 – Mirant Potomac River, LLC: Representatives of the Mirant Potomac River, LLC Generating Station appeared before the Board. The representatives briefed the Board on regulatory authorities, the plant features and operations and environmental performance and technology.

Minute No. 7 – Public Forum: Mr. Lowell Smith appeared to request that the Board take ownership of the Greenhouse Gases Report presented by the State Advisory Board on Air Pollution and to work with the Governor and General Assembly to make them aware of the problems we face and their responsibility to find solutions for the problems.

Cindy M. Berndt